

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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UNITED STATES OF AMERICA,  
  
Plaintiff,  
  
v.  
  
ROBERT ALLEN POOLEY,  
  
Defendant.

No. 2:21-CR-111 WBS

ORDER

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The government has moved for disclosure of witness Yuri Garmashov's text messages with defendant under Federal Rule of Criminal Procedure 26.2. The defendant objects in part, arguing that portions of these texts should be redacted on two grounds. First, defendant contends that certain texts sent by Garmashov are unrelated to his testimony and should be redacted under 26.2(c). Second, defendant contends that the government cannot compel disclosure of his own texts under 26.2. The government also objects to any in camera proceeding that would

1 exclude the government at which the court would determine  
2 whether Garmashov's texts are related to his testimony.

3 Rule 26.2(c) reads:

4 If the party who called the witness claims that the  
5 statement contains information that is privileged or  
6 does not relate to the subject matter of the witness's  
7 testimony, the court must inspect the statement in  
8 camera. After excising any privileged or unrelated  
portions, the court must order delivery of the  
redacted statement to the moving party. If the  
defendant objects to an excision, the court must  
preserve the entire statement with the excised portion  
indicated, under seal, as part of the record.

9 Under the court's interpretation of this rule, the  
10 party requesting reciprocal discovery is not permitted to see  
11 any of the statements prior to the court's in camera inspection.  
12 Accordingly, the court overrules the government's objection to  
13 an in camera inspection excluding the government.

14 In order for the court to determine what portion of  
15 Garmashov's statements are unrelated to his testimony, defendant  
16 shall produce a list of those statements he claims are  
17 unrelated.

18 The government contends that it is entitled to receive  
19 defendant's own statements within the text message conversations  
20 with Garmashov. It relies on United States v. Losch, No. CR-19-  
21 00294-001-PHX-MTL, 2022 WL 2092535 (D. Ariz. June 9, 2022).  
22 However, that case is inapposite. There, the government  
23 submitted text messages between FBI agents and potential  
24 witnesses for in camera review. The government sought to redact  
25 all the texts from the government agent and left only the  
26 statements of the witnesses. The court found as to one  
27 statement that "the context to this message is necessary to  
28 Defendant's full understanding" and then explained that

1 "additional context is necessary during the conversation"  
2 between the agent and another witness. The court thus ordered  
3 the government to include the agent's text messages with these  
4 witnesses' statements. Nothing in this case addresses  
5 disclosure of a defendant's own statements.

6 The court notes that nothing in Rule 26.2 states that  
7 a moving party may demand statements of third parties where  
8 necessary to give context to the witness's statements.  
9 Moreover, the government has not pointed to any authority  
10 stating that it may compel disclosure of defendant's own  
11 statements to a witness under Rule 26.2. The court is  
12 especially wary of requiring a criminal defendant to disclose  
13 his own statements and does not find that Rule 26.2 requires him  
14 to do so. Accordingly, defendant may redact his own statements  
15 within the text conversations with Yuri Garmashov.

16 IT IS SO ORDERED.

17 Dated: May 22, 2024



18 **WILLIAM B. SHUBB**  
19 **UNITED STATES DISTRICT JUDGE**  
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